

REMARKS

Claims 1-14 are pending in the present application. Claims 9-14 are cancelled and new claims 15-22 are presented.

Support for the above amendments can be found throughout the specification and claims as originally filed. Specifically, support for new claim 15 is found in original claim 1 and in the specification at paragraphs 48, 58, 62, 65, and 72, and support for new claims 16-22 can be found in original claims 2-8.

Rejections under 35 U.S.C. § 103(a)

In the Office action, claims 1-4, 7 and 8 are rejected under 35 U.S.C. § 103(a), as being unpatentable over McCleary (U.S. Patent Publication No. 2002/0182196 A1) in view of Davis et al. ("Enhanced absorption of oral vitamin B12 from a resin adsorbate administered to normal subjects," 5(3) J. Manipulative & Physiological Therapeutics 123-127 (1982), Singh et al. ("Neuropsychopharmacological effects if the Ayurvedic nootropic *Bacopa monniera* Linn. (Brahmi)," 29 J. Pharmacology S359-365 (1997), and Ikaguchi et al. (U.S. Patent No. 4,933,354).

As set forth in the Office action, no single reference discloses the claimed combination. As such, the Office action asserts that the combination and modification of at least four references renders the claims obvious. The Office action asserts that the claimed composition is obvious in part because "it is *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose." OA at 5. Applicant respectfully disagrees. As set forth in the current specification, "[a]lthough individually many of the nutrients have been clinically shown to enhance mental energy levels as well as support and enhance mental focus,

concentration and memory, these nutrients have an enhanced synergistic [e]ffect when combined within the present invention.” Specification at ¶ [0017]. Moreover, the asserted combination is not simply a combination of two or more ingredients, but requires combination of the references and then modification of McCleary in view of Davis et al. Such a combination *and* modification is not *prima facie* obvious.

Further, the Office action asserts that “Ikaguchi taught that 2-pyrroldone-5-carboxylic acid (also known in the art as L-Pyroglutamic acid) was useful in the treatment of mental disorders” OA at 4. Applicant respectfully disagrees. Ikaguchi is directed to “novel 2-pyrrolidone-5-carboxylic acid compounds produced from 2-pyrrolidone-5-carboxylic acid as having application in the treatment of mental disorders. Ikaguchi discloses 2-pyrrolidone-5-carboxylic acid as a starting material to produce other compounds. See Ikaguchi at col. 3, ll. 13-25. Note, Applicant’s disclosure discusses the use of L-Pyroglutamic acid at paragraphs 63-65. Regardless, the asserted combination is not obvious for the reasons set forth above.

Accordingly, claim 1 and claims 2-8, which depend therefrom, are not obvious in view of McCleary, Davis et al., Singh et al. or Ikaguchi, alone or in combination.

In the Office action, claims 1, 2, and 4-7 are rejected under 35 U.S.C. § 103(a), as being unpatentable over Daragan et al. (RU 2164764 C1), Sakai et al. (U.S. Patent No. 6,117,853), Gao et al. (CN 1222348 A), Ikaguchi et al. , and Singh et al., in view of Davis et al.

Said claims are patentable of the asserted combination for the reasons set forth above regarding Davis et al., namely, (1) as set forth in the current specification, “[a]lthough individually many of the nutrients have been clinically shown to enhance

mental energy levels as well as support and enhance mental focus, concentration and memory, these nutrients have an enhanced synergistic [e]ffect when combined within the present invention.,” Specification at ¶ [0017], and (2) the asserted combination is not simply a combination of two or more ingredients for the same purpose, but requires combination of the references and then modification of the references in view of Davis et al. Such a combination *and* modification is not *prima facie* obvious.

Further, the Office action asserts that “Sakai beneficially teaches a composition comprising phosphatidyl-L-serine having the effect of improving memory impairment.” OA at 6. Sakai, however, teaches away for the use of soy derived phosphatidyl-L-serine for cerebration. Sakai at col. 1, ll. 34-43. Instead, Sakai teaches the use of a “rearranged phosphatidyl-L-serine” according to the methods disclosed therein. Sakai at col. 3, ll. 27-34. Accordingly, one skilled in the art would not have a reasonable expectation of success or knowledge of use for the same purpose, as relied upon in the Office action for the combination based upon the teaching of Sakai. Note, Applicant’s disclosure discusses the use of phosphatidyl serine at paragraphs 46-48. Regardless, the asserted combination is not obvious for the reasons set forth above.

Accordingly, claim 1 and claims 2-8, which depend therefrom, are not obvious in view of Daragan et al., Sakai et al., Gao et al., Ikaguchi et al., Singh et al., and Davis et al., alone or in combination.

New Claims

New claims 15-22 are patentable over the cited references for at least the same reasons set forth above regarding claims 1-8.

CONCLUSION

In view of the foregoing, it is submitted that the claims are in condition for allowance. A Notice of Allowance is requested. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact the undersigned at 310-788-3271.

Dated: July 29, 2010

Respectfully submitted,

Correspondence Address:

Perkins Coie LLP

Customer No. 34055
Perkins Coie LLP
Patent - LA
P.O. Box 1208
Seattle, WA 98111-1208
Phone: (310) 788-9900
Fax: (206) 332-7198

By: / Joseph P. HAMILTON /
Joseph P. Hamilton
Reg. No, 51,770